BANK'S LIABILITY FOR DISHONOR OF CHECK. — When a bank fails without just excuse to honor a depositor's check, the latter may sue either in contract or in tort. *Marzetti* v. *Williams*, 1 B. & Ad. 415; *Burroughs* v. *Tradesmen's Nat. Bank*, 87 Hun (N. Y.) 6. The contractual obligation is implied in the very nature of the relation of the bank to the depositor. The basis of the tort liability, however, is not altogether clear. In a recent article Professor Huffcut advances two theories as possible grounds for supporting the tort action: first, that the act of wrongful dishonor is "an unnamed tort analogous to a slander of title or disparagement of goods or credit;" or, secondly, that it is a violation of a duty imposed by the policy of the law upon banking institutions as quasi-public agencies. The former theory he accepts; the latter he condemns. *Liability of a Bank to the Maker of a Check for the Wrongful Dishonor Thereof*, by Ernest W. Huffcut, 2 Colum. L. Rev. 193 (April, 1902).

While the soundness of the latter theory is perhaps doubtful, the author's argument against it seems incomplete. His statement that the tort in question can be committed by any private individual as well as by a bank, and that a bank requires no public franchise, is inconclusive; for carriers and telegraph companies need not be incorporated, nor need they secure public franchises, and yet the law imposes upon them a liability that is more than contractual. A stronger argument against the theory Professor Huffcut appears to have entirely overlooked. If it were true that banks were under a general duty analogous to that imposed on carriers, it would follow that there could be no discrimination by a bank; no accounts could be refused so long as reasonable compensation were assured by the applicants. *Cf. Jackson* v. *Rogers*, 2 Show. 327. Such a result would hardly be desirable.

In support of the theory that a wrongful dishonor is a slander of credit the author quotes suggestive language from cases and text-writers. *Marzetti* v. *Williams*, *supra*, at 424; ODGERS, LIBEL AND SLANDER, 3d ed., 13. No cited case distinctly says that slander of credit is the basis of the action and yet it is to be noted that in most cases of dishonor the damage produced is of precisely the same kind that would result from intentional verbal slander of business reputation. The only question, then, is whether this similarity of damage warrants the inference that slander and wrongful dishonor of checks have a common basis in the recognized duty to refrain from disparaging the character or business of another. Such a conclusion is not logically necessary and its soundness may perhaps be questioned. It is, however, preferable to the other view suggested.

In fairness it may be added that the "quasi-public agency" theory, if adopted, might furnish a convenient explanation of those cases which allow the payee, as well as the maker, a direct remedy against the bank. See *Munn* v. *Burch*, 25 Ill. 35. At present they are often rested on an unsatisfactory theory of equitable assignment. See TIED., COM'L PAPER, § 452; 11 HARV. L. REV. 548.

PRINCIPLES OF CONTRACT. A treatise on the general principles concerning the validity of agreements in the law of England. Seventh edition. By Sir Frederick Pollock, Bart. London: Stevens and Sons, Limited. 1902. pp. li, 768. 8vo.

The new edition of this well known book is not materially changed from the sixth edition, which was published in 1894. The author has somewhat retrenched the space given to the discussion of questions of comparative law and topics not falling necessarily within the law of contracts. The most considerable alterations are in the earlier chapters. What is said of corporations has been condensed; the historical account of consideration has been rewritten,

with acknowledgment of indebtedness to Professor Ames, "who has put the whole subject on a new footing." An excursus on the Roman and mediæval law of contracts has been transferred with some revision from the text of Chapter III. to the Appendix. In Chapter VII the rules as to contracts in restraint of trade have been reduced to a much simpler form in consequence of the decision of the House of Lords in Nordenfeld's case. The chapters on Consideration and on Illegal Contracts have been expanded more than any others. All these changes commend themselves.

On the vexed question whether the promise or performance of an act to which the promisor or actor was already bound to a third person is a sufficient consideration, the author returns to the theory set forth in his first edition (which is also the view of Professor Langdell) that such a promise is good consideration for another promise, though performance of the act is not. In the intermediate editions of his work and especially in his article on Contracts in the Encyclopedia of the Laws of England the author has not always clearly held to this view.

It is matter for regret, though not for criticism, that the author has not found time or inclination to enlarge the scope of his work so as to cover the performance and discharge of contracts. The original plan of the book included neither of these topics. The chapter entitled Duties under Contract, first inserted in the fifth edition, though excellent so far as it goes, is hardly an adequate presentation of the subject with which it deals; and the whole topic of discharge of contracts, as well as one or two other subjects usually dealt with in books on the law of contracts, are still wholly untouched. Sir Frederick Pollock's gift of easy and graceful exposition would make any enlargement welcome.

In the citation of recent authorities this edition leaves something to be desired. The following omissions have been noted: *Rooke* v. *Dawson*, [1895] 1 Ch. 480, deciding that an announcement of a scholarship competition was not an offer; *Page* v. *Norfolk*, 70 L. T. 781, illustrating the necessity of having the terms of a bargain fixed by the parties, not left for a subsequent "detailed contract;" *Falck* v. *Williams*, [1900] A. C. 176, on mistake preventing the formation of a contract; *Ashwell* v. *Stanton*, 16 T. L. R. 399, a questionable decision upon the elements of consideration; *Ashmore* v. *Cox*, [1899] 1 Q. B. 436, on impossibility as a defence; *Cleaver* v. *Mut. Reserve Fund Life Assoc.*, [1892] 1 Q. B. 147, *Gandy* v. *Gandy* 30 Ch. D. 57, *Drimmie* v. *Davies*, [1899] 1 Ir. Rep. 176, upon the right of one not a party to a contract to enforce its provisions. At page 269 the author's just criticism of the rule of *Freeth* v. *Burr* is not accompanied by the citation of *Rhymney Ry. Co.* v. *Brecon Ry. Co.*, 83 L. T. 111, and *Cornwall* v. *Henson*, [1900] 2 Ch. 298, where the rule criticised is again laid down as accurate. The equally sound criticism of *Fellowes* v. *Lord Gwydyr*, on page 107, has been justified by the decision in *Archer* v. *Stone*, 78 L. T. 34, but no reference is made to the latter case. S. W.

A MANUAL OF THE PRINCIPLES OF EQUITY. By John Indermaur. Fifth edition. London: Geo. Barber. 1902. pp. xxxii, 574. 8vo.

The author of this book has attempted to write a manual "specially suitable for students . . . but at the same time intended to be useful in a limited way to practitioners." This must of necessity be a difficult task, as the needs of his two classes of readers are so inherently dissimilar that they cannot be merged. The one wants to know merely what and where the law is on a given point; while the other demands both what and why it is, and whence it came. Mr. Indermaur is to be congratulated on having answered most of these questions concisely and accurately, but he has, by not answering the "why" of the law, made a practitioner's handbook rather than a student's manual. He has given us no theory; he offers twelve maxims which are to do duty instead. Thus he dismisses the very debatable doctrine of "tacking" with the remark that "where the equities are equal the law prevails," — hardly an adequate treat-